

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**THOMAS FELDSER,**  
**Plaintiff,**

**v.**

**CURRAN FROMHOLD  
CORRECTIONAL FACILITY,**  
**Defendant.**

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**CIVIL ACTION NO. 22-CV-211**

**MEMORANDUM**

**RUFE, J.**

**FEBRUARY 7, 2022**

Thomas Feldser, a pretrial detainee housed at the Philadelphia Industrial Correctional Center, filed this civil action pursuant to 42 U.S.C. § 1983. The only named Defendant is Curren-Fromhold Correctional Facility (“CFCF”). Feldser also seeks to proceed *in forma pauperis* and has submitted a copy of his institutional account statement. For the following reasons, the Court will grant Feldser leave to proceed *in forma pauperis* and dismiss his Complaint without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief can be granted.

**I. FACTUAL ALLEGATIONS**

Feldser’s allegations are extremely brief. He alleges that in December 2020 “I got COVID-19, then they sent me to the Detention Center with no medical help.”<sup>1</sup> He seeks \$2 million in money damages.<sup>2</sup>

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<sup>1</sup> Complaint [Doc. No. 2] at 5. The Court adopts the pagination supplied by the CM/ECF docketing system.

<sup>2</sup> Complaint [Doc. No. 2] at 5.

## II. STANDARD OF REVIEW

The Court grants Feldser leave to proceed *in forma pauperis* because it appears that he is incapable of paying the fees to commence this civil action.<sup>3</sup> Accordingly, 28 U.S.C.

§ 1915(e)(2)(B)(ii) requires the Court to dismiss the Complaint if it fails to state a claim.<sup>4</sup>

Whether a complaint fails to state a claim under § 1915(e)(2)(B)(ii) is governed by the same standard applicable to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6),<sup>5</sup> which requires the Court to determine whether the complaint contains “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”<sup>6</sup> “At this early stage of the litigation, [the Court will] accept the facts alleged in [the plaintiff’s] *pro se* complaint as true, draw all reasonable inferences in [the plaintiff’s] favor, and ask only whether that complaint, liberally construed, contains facts sufficient to state a plausible [] claim.”<sup>7</sup> Conclusory allegations do not suffice; they must be supported by at least some alleged facts.<sup>8</sup> As Feldser is proceeding *pro se*, the Court construes his allegations liberally.<sup>9</sup>

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<sup>3</sup> However, because he is a prisoner Feldser will be obligated to pay the filing fee in installments in accordance with the Prison Litigation Reform Act. See 28 U.S.C. § 1915(b).

<sup>4</sup> 28 U.S.C. § 1915(e)(2)(B)(ii) (“the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim on which relief may be granted.”)

<sup>5</sup> See *Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999).

<sup>6</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted).

<sup>7</sup> *Shorter v. United States*, 12 F.4th 366, 374 (3d Cir. 2021) (quotations omitted)

<sup>8</sup> *Iqbal*, 556 U.S. at 678.

<sup>9</sup> *Vogt v. Wetzel*, 8 F.4th 182, 185 (3d Cir. 2021) (citing *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244–45 (3d Cir. 2013)).

### III. DISCUSSION

The Court understands Feldser to be asserting a constitutional claim based on a lack of medical care when he contracted Covid-19. 42 U.S.C. § 1983 allows state actors and officials to be sued in federal court for violations of federal rights. “To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.”<sup>10</sup>

Feldser’s Complaint must be dismissed because the only party he has named, CFCF, is not a “person” as that term is used in § 1983, and so cannot be sued under that statute.<sup>11</sup> “A defendant in a civil rights action must have personal involvement in the alleged wrongs.”<sup>12</sup> However, because Feldser may be able to assert a plausible claim against a person under § 1983 based on a lack of medical treatment,<sup>13</sup> the dismissal of the Complaint will be without prejudice. Feldser will be granted an opportunity to file an amended complaint to cure this defect..

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<sup>10</sup> *West v. Atkins*, 487 U.S. 42, 48 (1988).

<sup>11</sup> See *Cephas v. George W. Hill Corr. Facility*, No. 09-6014, 2010 WL 2854149, at \*1 (E.D. Pa. July 20, 2010) (holding that a prison in Delaware County, Pennsylvania was not a legal entity that could be sued under 42 U.S.C. § 1983); *Miller v. Curran-Fromhold Corr. Facility*, No. 13-7680, 2014 WL 4055846, at \*2 (E.D. Pa. Aug. 13, 2014) (citing *Mitchell v. Chester Cty. Farms Prison*, 426 F. Supp. 271 (E.D. Pa. 1976) (holding that CFCF is not a “person” that can be sued under 42 U.S.C. § 1983).

<sup>12</sup> See *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988); see also *Dooley v. Wetzel*, 957 F.3d 366, 374 (3d Cir. 2020) (quoting *Rode*, 845 F.2d at 1207) (“Personal involvement requires particular ‘allegations of personal direction or of actual knowledge and acquiescence.’”).

<sup>13</sup> To state a constitutional claim based on the failure to provide medical treatment, a prisoner must allege facts indicating that one or more prison officials were deliberately indifferent to his serious medical needs. See *Farmer v. Brennan*, 511 U.S. 825, 835 (1994) (describing the “deliberate indifference” standard). A prison official is not deliberately indifferent “unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” *Id.* at 837. “A medical need is serious . . . if

#### IV. CONCLUSION

For the foregoing reasons, the Court will dismiss Feldser's Complaint without prejudice.

An appropriate Order follows with additional instruction on amendment.

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it is one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention." *Monmouth Cnty. Corr. Institutional Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987) (quotations omitted). Deliberate indifference is properly alleged "where the prison official (1) knows of a prisoner's need for medical treatment but intentionally refuses to provide it; (2) delays necessary medical treatment based on a non-medical reason; or (3) prevents a prisoner from receiving needed or recommended medical treatment." *Rouse v. Plantier*, 182 F.3d 192, 197 (3d Cir. 1999). A serious medical need exists where "failure to treat can be expected to lead to substantial and unnecessary suffering." *Colburn v. Upper Darby Twp.*, 946 F.2d 1017, 1023 (3d Cir. 1991). Allegations of medical malpractice and mere disagreement regarding proper medical treatment are insufficient to establish a constitutional violation. *See Spruill v. Gillis*, 372 F.3d 218, 235 (3d Cir. 2004).